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IN THE

Supreme Court of the United States

October Term, 1961

No. 643

SAMUEL BAILEY, *et al.*,

Appellants,

—v.—

JOE T. PATTERSON, *et al.*,

Appellees.

REPLY TO APPELLEES' MOTIONS TO DISMISS OR TO AFFIRM

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REPLY TO APPELLEES' MOTIONS TO DISMISS OR TO AFFIRM

Appellants have received Motions to Dismiss or Affirm, filed by appellees, City of Jackson, Mississippi, its Mayor, Commissioners and Chief of Police, by appellees Greyhound Corporation and Continental Southern Lines, Inc., and by appellee Attorney General of Mississippi. Appellants herein reply to these Motions reserving the right to file further replies to any other Motion to Dismiss or Affirm which may be filed by any of the other parties hereto.*

I.

Motion to dismiss or affirm filed by the City of Jackson, Mississippi, its Mayor, Commissioners, Chief of Police, and by the Attorney General of Mississippi.

A. *Appellants' Claims Are Justiciable*

The essence of the motion by appellee city and its officials consists of the position, utterly unsupported in the record,

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* Time to file Motion to Dismiss or Affirm has expired.

that Jackson, Mississippi is not enforcing segregation in intrastate and interstate travel or appurtenant terminal facilities. If it were necessary, the Court could rely solely on the notorious fact that Mississippi and all of its subdivisions are obedient to the precept of 17 Miss. Code Ann. §4065.3 which exhorts "The entire executive branch of the government of the State of Mississippi, and of its subdivisions, and all persons responsible thereto, including the governor . . . mayor . . . chiefs of Police, policemen . . . to prohibit by any lawful, peaceful and constitutional means, the causing of a mixing or integration of the white and Negro races in . . . public waiting rooms, . . . " This provision further incorporates by reference the massive, pervasive "Resolution of Interposition" which purports to negate federal prohibitions against state enforcement of racial segregation. Notice of the policy of the State of Mississippi in connection with its University was recently taken by the Fifth Circuit in *Meredith* v. *Fair*, 30 U.S. Law W. 2347-2348:

> This case was tried below and argued here in the eerie atmosphere of never-never land Counsel for [University] argue that there is no state policy of maintaining segregated institutions of higher learning and that the court can take no judicial notice of this plain fact known to everyone.
>
> We take judicial notice that the state of Mississippi maintains a policy of segregation in its schools and colleges.

But this Court need not rely on judicial notice alone. The record thoroughly substantiates appellants' contention that Mississippi and the City of Jackson enforce racial segregation in interstate and intrastate travel facilities, in waiting rooms, in connection with rail, bus, and air transportation, against local residents and out of state travelers, against

"freedom riders" and ordinary travelers. Moreover, segregation is enforced in obedience to statutes of the state requiring segregation, and an ordinance of the city requiring segregation, and, in apparent effort to escape federal interdiction, pursuant to breach of the peace laws. The enforcement, and immediate threat inflicted by Mississippi in all these ways leaps to the eye, not only through express evidence inscribed in the record, but by means of the tenacious and evasive posture of Mississippi officials and officers of the City of Jackson who seek somehow to perpetuate segregation through taking the position that they are not enforcing it.

At the close of the trial in the court below counsel for Jackson City Lines, the local bus company, addressed the Court with a plea that it enter an injunction so that Jackson City Lines could cease segregating under compulsion of statutes and ordinances without subjecting itself to the penalties of these duly enacted requirements that racial segregation be maintained.

> We are purely a local company operating only in the City of Jackson. The same identical statute that required the railroad and the bus companies to put up a sign, in another part of the same section requires us to do that exactly which we are doing. The city ordinance is an exact copy of the state law, which required us to do that which we are doing. I want to make this statement now because I think that the responsibility for what may happen should be shifted to some extent from my shoulders. The Illinois Central Railroad and both the bus lines have, according to the testimony here—and I have every reason to believe every word of it—ceased to make any effort to enforce any of these statutes except to have the signs there which they have no control of. I have the signs in

> buses, and those drivers are instructed just as this driver told you, because I am the man that wrote the instructions to park the buses in the event someone fails to operate on the basis of those signs. . . . If you would tell me this afternoon that in your opinion those statutes are unconstitutional, I would take the signs out of my buses and tell my buses to operate like the railroads and the other two bus companies.
>
> • • •
>
> I don't think any injunction should issue against me, but I need some relief because if I go pull the signs out of the buses, I am pulling them out in the face of the statute and an ordinance created by my own rate-making body, and I am in trouble either way I go (R. 696-698).

Yet the City of Jackson which insists that segregation is not being enforced, through its attorney opposed this request of the bus company that it be enjoined from segregating:

> I certainly would like to be heard before you act on any such suggestion as made to the Court. On behalf of the City of Jackson, I strenuously object to any injunction issuing in this case. . . . (R. 697).

And the State of Mississippi through its counsel also urged:

> We too oppose any issuance of any injunction in this case. . . . (R. 698).

The appellants in this case had protested the segregation here enforced years ago. Yet, a local Jackson official of another one of the carriers (Greyhound) wrote to its president that it too was coerced by state law:

> I will say this, if the N.A.A.C.P. does start using the waiting rooms at any Terminal in Jackson, Mississippi there will be plenty of trouble, because the police department has the backing of the City Officials and it appears they will go all the way to keep the races segregated in Mississippi (R. 204; Plaintiffs' Exh. No. 6).

And counsel for Greyhound in its Motion to Dismiss or Affirm recently filed with this Court, stated on p. 4 that:

> The testimony is without dispute that the signs were placed over the entrance doors at the two terminal buildings pursuant to the provisions of Chapter 258, Laws of 1956, Mississippi Legislature, Regular Session. Violation of these statutes requiring the posting of these signs and the corresponding City of Jackson ordinance carries a severe penalty.

The letter quoted above was written before such a thing as freedom riders existed. Indeed, appellants respectfully suggested that "freedom riders" probably never would have come into existence if Mississippi and appellee carriers had been obedient to long-established requirements of federal law. See *Mitchell* v. *United States*, 313 U.S. 80 (1941); *Morgan* v. *Virginia*, 328 U.S. 373 (1946); *Henderson* v. *United States*, 339 U.S. 816 (1950); *NAACP* v. *St. Louis-San Francisco Ry.*, 297 ICC 335 (1955); *Keys* v. *Carolina Coach Co.*, 164 M.C.C. 769 (1955); *Flemming* v. *South Carolina Electric and Gas Co.*, 224 F. 2d 752 (5th Cir. 1955), appeal dismissed, 351 U.S. 901; *Browder* v. *Gayle*, 142 F. Supp. 707 (M.D. Ala. 1956), affirmed, 352 U.S. 903 (1956); *Boynton* v. *Virginia*, 364 U.S. 454 (1960).

The suggestion that this suit arises from capricious, arbitrary activities of "freedom riders" belies the record.

Appellant Bailey in this case testified concerning the arrest of a co-worker seated next to him on a Jackson City bus. This co-worker obviously was not and, it is not alleged that he was, a freedom rider (R. 250). Moreover, other arrests of local residents occurred on Jackson City buses. They also were merely local travelers, not freedom riders (R. 342, 347, 353). Long before anyone ever heard of freedom riders, the witness Evers was required to be segregated in the local air terminal (R. 312-315). And see all of the other testimony of arrests and prosecutions and other intimidation by state officials in Mississippi of persons who with one exception, could not be characterized as freedom riders. (Jurisdictional Statement of Appellants, pp. 16-18.) Beyond this, the so-called freedom riders were obviously not guilty of any crime and were unconstitutionally deprived of their federal constitutional rights. See appellants' Exhibit Nos. 32, 33, 34 and 35 (R. 532, 536, 541-542, 544). *Garner* v. *Louisiana*, 7 L. ed. 2d 207; *Thompson* v. *City of Louisville*, 362 U.S. 199; *Lewis* v. *Greyhound Corp.* (M.D. Ala., C.A. No. 1724-n, November 1, 1961, not yet reported).

It is quite untrue, as appellees City of Jackson and its officials urge, that:

> The gist of Appellants' action is now and has always been an effort to stop the State Court prosecutions of the self-styled Freedom Riders. This necessarily resolves itself into purely factual issues as to whether the various persons arrested were or were not guilty of a breach of the peace which justified the arrests. None of them was arrested under the segregation statutes attacked in the case (Exhibits 32, 33, 34 & 35). (Motion of City to Dismiss or Affirm, p. 10.)

This case involves local residents and out of state travelers too, who have long been subjected to denial of constitu-

tional rights on all of the common carriers, air, rail and bus, local and interstate, in the City of Jackson and elsewhere in Mississippi. While other citizens of the United States who have protested this unconstitutional deprivation of rights are members of this class seeking the benefit of the decree in this cause, the complaint and prayer go far beyond the "freedom riders" who are, appellants submit, a by-product of the Mississippi policy proclaimed in 17 Miss. Code Ann. §4065.3 and the Mississippi Statutes, extracts from which occupy pages 7-11 of the appellants' Jurisdictional Statement.

It is, therefore, frivolous to suggest, as appellees do on page 16 of the Motion to Dismiss or Affirm, that "Appellants have no standing to litigate the constitutional issues presented because of the non-justiciability of Appellants' claims." As this Court held in *Evers* v. *Dwyer*, 358 U.S. 202:

> We do not believe that appellant, in order to demonstrate the existence of an "actual controversy" over the validity of the statute here challenged, was bound to continue to ride the Memphis buses at the risk of arrest if he refused to seat himself in the space in such vehicles assigned to colored passengers. A resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of the statute which imposes the disability. See Gayle v. Browder, 352 US 903; 1 L ed 2d 114, 77 S Ct 145, affirming the decision of a three-judge District Court (Ala) reported at 142 F Supp 707.

Moreover, these statutes are not only being enforced through the arrest and prosecution of Negroes with sufficient temerity to challenge segregation, but through signs

which direct the races to different waiting rooms, signed "By order of Police Department" (R. 218, 259, 277). Also, there is the posting of signs by the various carriers obedient to state law. As the Court of Appeals for the Fifth Circuit held in *Baldwin* v. *Morgan*, 287 F. 2d 750, 755 (5th Cir. 1961), "when in the execution of that public function [a carrier] is the instrument by which state policy is to be and is effectuated, activity which might otherwise be termed private may become state action within the Fourteenth Amendment." Police posting of racial signs outside of the terminals in question is far more state action than occurred in *Baldwin* v. *Morgan, supra,* where "the state [did] not physically post the signs, but it [did] so just as effectively through the instrument of the Terminal." 287 F. 2d at 755. Indeed, in *Baldwin,* the Court of Appeals found "The very act of posting and maintaining separate facilities when done by the Terminal as commanded by these state orders is action by the state." 287 F. 2d at 755. Not only terminals, but carriers as well posted signs in Jackson.

The abstract quotations from cross-examination in the City of Jackson's Motion to Dismiss or Affirm which appear on page 16 of said Motion are meaningless when taken out of context. The obvious full meaning of the witness' testimony was that they sought to avoid the harassment, obloquy and hardship which experience told inevitably would follow should they make an effort to ride in a nonsegregated manner. The Constitution does not require that one subject himself to arrest when it is known that arrest inevitably will follow in order to file an action in the United States court to secure one's constitutional rights. *Evers* v. *Dwyer*, 358 U.S. 202; *Baldwin* v. *Morgan*, 251 F. 2d 780 (5th Cir. 1958).

Appellees, City of Jackson, do not rely properly on this Court's decision in *Poe* v. *Ullman*, 6 L. ed. 2d 989, 996, for

'n that case, as the opinion of Mr. Justice Frankfurter stated, the suit was not brought by "one who [was] himself immediately harmed or immediately threatened with harm by the challenged action." See Motion of City of Jackson, p. 19. The multitudinous arrests occurring over a long period of time in every variety of facility, the intricate network of statutes and the ordinance requiring segregation, the refusal of the Attorney General of Mississippi to acknowledge the unconstitutionality of state segregation laws (R. 527) and his avowal, when asked whether and under what circumstances he would enforce these laws, that "If conditions should arise to such a point that I thought it was necessary to bring them into effect, yes." (R. 515), demonstrates that Mississippi presently continues as it always has, to enforce segregation in every aspect of state life, including local and interstate travel.[1] The two-step operation of prosecuting for breach of the peace, rather than for failure to segregate per se, does not at all vitiate the monolithic state policy declared in 17 Miss. Code Ann. §4065.3. In fact, petitioners respectfully submit, it is difficult, if not impossible, to conceive of a case in which enforcement of a state policy at all points is more immediate a threat to one who seeks to enjoy constitutional rights.

So far as "freedom riders" are concerned, the continued daily prosecution of citizens from outside the state, who on the detailed evidence of this record, are being convicted in the Mississippi courts for what under *Thompson* v. *City of Louisville*, 362 U.S. 199 and *Garner* v. *Louisiana*, 30 U.S. L. Week 4070, is obviously not a crime, in violation of

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[1] Q. Have you [the Attorney General] ever made any public announcement to the effect that these laws referred to in the Complaint would not be enforced?

* * *

A. Certainly not (R. 527).

Fourteenth Amendment rights, is a daily advertisement by Mississippi to everyone that it intends to continue enforcing racial segregation in travel.

The threat is real, it is immediate, and appellants have no relief but by judicial enforcement of long established constitutional rights.

B. *The Order Below Is Appealable*

Appellants submit that in the jurisdictional statement they adequately set forth reasons why the order below is appealable and that appellees, City of Jackson and its officials, have not in any wise distinguished the cases cited (*Bryan* v. *Austin*, 148 F.Supp. 563 (E.D.S.C. 1957), app. dism. as moot, 354 U.S. 933 (1957); *Government & Civic Employees Organizing Comm., CIO* v. *Windsor*, 353 U.S. 364 (1957), per curiam; *NAACP* v. *Bennett*, 360 U.S. 471 va'g automatic remand to state court for consideration in light of *Harrison* v. *NAACP*, 360 U.S. 167), except, essentially, to suggest that the question of appealability "was [not] raised or decided" in said cases (Motion to Dismiss or Affirm, p. 9). Appellants submit, however, that this consistent course of decision coupled with the policy of the jurisdictional statutes involved clearly supports appealability. It is the substance of the order rather than the terminology to which the statutes look. As this Court said in *Ettelson* v. *Metropolitan Life Ins. Co.*, 317 U.S. 188, 191-192:

> As in the *Enelow* case [293 U.S. 379] so here, the result of the District Judge's order is the postponement of trial of the jury action based upon the policies; and it may, in practical effect, terminate that action. It is as effective in these respects as an injunction issued by a chancellor. If the order be found to be erroneous, it will have to be set aside and the plaintiffs

> permitted to pursue their action to judgment. The plaintiffs are, therefore, in the present instance, in no different position than if a state equity court had restrained them from proceeding in the law action. Nor are they differently circumstanced than was the plaintiff in the *Enelow* case. *The relief afforded by §129 is not restricted to the terminology used. The statute looks to the substantial effect of the order made.*[2] [Emphasis added.]

Obviously the substantial effect of the order below was to deny a temporary injunction no matter what the order was called. Appellants' motion for preliminary injunction was filed June 9, 1961. The hearing was delayed three months before a trial was held and oral arguments were completed upon the motion. The order of November 17th stayed proceedings for a "reasonable," but nevertheless, indefinite length of time. Its practical effect and therefore its legal effect has been to deny appellants relief for the indefinite future. The order constituted an adjudication of the question of preliminary relief. The motion for preliminary injunction is no longer *sub judice*. Failure to take jurisdiction of an appeal under circumstances such as these would result in an *ad hoc* episodic, inconsistent treatment of cases which are essentially alike.[3] For example, if the

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[2] See also *Romero* v. *Weakley*, 226 F. 2d 399 (C.A. 9), reversing 131 F. Supp. 818 (S.D. Cal.). There the district court retained jurisdiction of the case pending state court proceedings. The court of appeals held that the action of the district court was reviewable and said (226 F. 2d at 400): "All the parties also are agreed that the decision to refuse to consider the complaints are appealable. Apart from the agreement we hold these are appealable decisions." In a footnote to this statement, the court added: "Alternatively, appellant sought a writ of mandamus. Our remanding order is, in effect, such a writ."

[3] See note, *Judicial Abstention From The Exercise of Federal Jurisdiction*, 59 Colum. L. Rev. 749, 771-776, for a discussion of the technique of disposition where the principle of equitable abstention is applied.

District Court would choose to dismiss a complaint (which it has power to do), see, e.g., *Alabama Public Service Commission* v. *Southern Railway*, 341 U.S. 341; *Burford* v. *Sun Oil Co.*, 319 U.S. 315, instead of retaining jurisdiction during state court proceedings, its order would be appealable. But, appellees urge, if it "retains" jurisdiction the order is not. Since the two methods of disposition are, in effect the same, however, one should not produce consequences different from the other. The treatment suggested by appellees would frustrate congressional intent for three-judge courts were created to provide a swift method of final determination of the constitutionality of state or federal enactments. See 28 U.S.C. §2284(4); 28 U.S.C. §1253. *Radio Corporation of America* v. *United States*, 95 F.Supp. 660 (N.D. Ill.), affirmed, 341 U.S. 412.

C. *The United States District Court From Which This Appeal Was Taken Had Jurisdiction of This Cause Under 28 U.S.C. §2281*

Appellees advance the argument that this was not properly a case for a three-judge federal district court, urging that "[t]he gist of Appellants' action is now and has always been an effort to stop the State Court prosecutions of the self-styled Freedom Riders. This necessarily resolves itself into purely factual issues as to whether the various persons arrested were or were not guilty of a breach of the peace which justified the arrests" (Motion to Dismiss or Affirm of City, p. 10). This, however, is clearly not the case, and a cursory glance at the record indicates that appellants have sought to enjoin racial segregation enforced by officers of the State of Mississippi under authority of a host of segregation statutes (see Jurisdictional Statement, pp. 6-11) and that such injunction has been sought on the ground of the unconstitutionality of the statutes (as well as, the record indicates, other grounds).

The amended complaint herein alleges:

> The jurisdiction of this Court is also invoked pursuant to provisions of Title 28, United States Code, Section 2281 and Section 2284. This is an action to enjoin the enforcement of certain statutes of the State of Mississippi requiring racial segregation on common carriers, and in waiting room and rest room facilities utilized by common carriers, and providing criminal penalties for carriers and persons refusing to abide by such segregation. The statutes sought to be enjoined are Title 11, Sections 2351, 2351.5 and 2351.7, and Title 28, §§7784, 7785, 7786, 7786-01, 7787, 7787.5, Mississippi Code Annotated (1942), and any other statute of the State of Mississippi requiring or permitting such segregation (R. 13).
>
> • • •
>
> The segregation complained of herein subjects plaintiffs and members of their class to daily public inconvenience, harassment, embarrassment, and arrest, and violates rights secured to plaintiffs and members of their class by the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution and Article 1, Section 8, Clause 3 (Commerce Clause) of the Federal Constitution and by the laws of the United States, Title 49, United States Code, §§3(1) and 316(d) (R. 21).

The prayer of the amended complaint seeks injunctive relief against state officers to prevent them from enforcing these state statutes requiring segregation on the ground of the unconstitutionality of said statutes (R. 21).

It is impossible to see how a complaint so sweeping in matters specifically directed against a host of transportation and waiting room segregation statutes can be narrowly

characterized as solely "an effort to stop State Court prosecutions of the self-styled Freedom Riders" by the motion to dismiss or affirm (Motion to Dismiss or Affirm, p. 10). The complaint falls squarely within the plain language of Title 28, §2281:

> An interlocutory . . . injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute . . . , shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges. . . .

Regularly the courts have looked into the complaint to see whether a three-judge court should be convened.

> As the bill challenged the validity under the Federal Constitution of an order of an administrative board of the state, the district court had jurisdiction under §266, Oklahoma Natural Gas Co. v. Russell, 261 U. S. 290, 67 L. ed. 659, 43 Sup. Ct. Rep. 353, and this court has jurisdiction on direct appeal. *Herkness* v. *Irion*, 278 U.S. 92, 93-94.

And see *Query* v. *United States*, 316 U.S. 486, 490:

> Here a substantial charge has been made that a state statute as applied to the complainants violates the Constitution. Under such circumstances, we have held that relief in the form of an injunction can be afforded only by a three-judge court pursuant to §266. Stratton v. St. Louis S. W. R. Co., 282 US 10, 75 L ed 135, 51 S Ct 8; Ex parte Bransford, 310 US 354, 361, 84 L ed 1249, 1253, 60 S Ct 947.

Ex parte Bransford, on which Appellees rely, also turns on a construction of the complaint. In that case it was held that:

> It is necessary to distinguish between a petition for injunction on the ground of the unconstitutionality of a statute as applied, which requires a three-judge court, and a petition which seeks an injunction on the ground of the unconstitutionality of the result obtained by the use of a statute which is not attacked as unconstitutional. The latter petition does not require a three-judge court. In such a case the attack is aimed at an allegedly erroneous administrative action. Until the complainant in the district court attacks the constitutionality of the statute, the case does not require the convening of a three-judge court, any more than if the complaint did not seek an interlocutory injunction. 310 U.S. 354, 361.

This hardly is a case, as suggested in *Bransford*, where "a prerequisite such as need for relief against state officers is lacking. . . ." 310 U.S. at 361. Nor is it a case where the three-judge court statute is inapplicable because the action complained of is not directly attributable to the statute. 310 U.S. at 361. Here there are not only a host of segregation statutes, but a general, recently enacted legislative pronouncement, 17 Miss. Code Ann., §4065.3, which stridently exhorts state officers, from the highest to the lowest, to enforce the racial segregation policies of the State. And, even if recourse to the record were appropriate to ascertain whether, in view of the complaint and the prayer, three judges were required, here is a record replete with examples of enforcement and obedience to an unconstitutional set of statutes by carriers and citizens under threat of enforcement. See Part 1A, *supra*. That segregation has been enforced in other ways, pursuant to

ordinance and so forth, does not rob the three-judge court of jurisdiction which reaches to questions cognizable by one judge as well as three. *Sterling* v. *Constantin*, 278 U.S. 378.

II.

Motion of Greyhound Corporation and Continental Southern Lines to dismiss and/or affirm.

The essence of the Motion to Dismiss or Affirm by these interstate carrier appellees is that they have not enforced racial segregation and that they are obedient to the Interstate Commerce Commission Order in Docket No. MC-C-3358, dated September 22, 1961, effective November 1, 1961 (Motion to Dismiss or Affirm of Greyhound Corporation and Continental Southern Lines, pp. 2, 5). The record, however, contains numerous instances of segregation on carriers being enforced by agents of the carriers subservient to state law and in combination with persons acting under color of law, or individually. See Jurisdictional Statement, pp. 16-19. The avowal by these carriers that now, following the decisions in *Morgan* v. *Virginia*, 328 U.S. 373; *Boynton* v. *Virginia*, 364 U.S. 454 and *Keys* v. *Carolina Coach Co.*, 64 M.C.C. 769 (1955), the aforesaid Order of the Interstate Commerce Commission, as well as the decisions of this Court in *Mitchell* v. *United States*, 313 U.S. 80, and *Henderson* v. *United States*, 339 U.S. 816, they no longer require segregation of passengers or persons using their terminals, is hardly a ground for avoiding the injunction which appellants seek to obtain against them and, therefore, does not render insubstantial the issues presented by this appeal.

This Court recently held in *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 48, that cessation of alleged activity does not itself moot a case:

> The courts have an obligation, once a violation . . .[4] has been established, to protect the public from a continuation of the harmful and unlawful activities. A trial court's wide discretion in fashioning remedies is not to be exercised to deny relief altogether by lightly inferring an abandonment of the unlawful activities from a cessation which seems timed to anticipate suit. See United States v. Oregon State Medical Soc., 343 U.S. 326, 333, 96 L. ed. 978, 72 S. Ct. 690.

This long has been the law. See *Walling* v. *Helmerich & Payne, Inc.*, 323 U.S. 37 where following suit to enjoin violation of the Fair Labor Standards Act the employer voluntarily discontinued use of contracts which were the subject of the suit. The cause was held to be justiciable. Similarly, in *United States* v. *W. T. Grant Co.*, 345 U.S. 629, where there was a disclaimer of intention to repeat practices against which an injunction was sought the case was held not moot. Of course, as suggested in the *W. T. Grant* case, "[t]he case may nevertheless be moot if defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.'" But, as stated there, "the burden is a heavy one." 345 U.S. 629, 633.

It might theoretically be established on some other record that these interstate carriers and their drivers and the managers of their terminals will not, in the future, direct Negroes and whites to separate parts of vehicles and terminals. But, a history over a period of years of repeated violations in the face of clear federal law does not instill confidence that at this juncture these appellees have become obedient to the Constitution and the Interstate Commerce Act. If they have, an injunction can do them no

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[4] The excised language refers to the antitrust laws, but, of course, is generally applicable.

harm. If they have not, appellants obviously need protection of the decree they have prayed for.

CONCLUSION

WHEREFORE, for the foregoing reasons, the appellants respectfully submit that this Court has jurisdiction in the instant case.

Respectfully submitted,

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